



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF K-L-H-

DATE: MAR. 13, 2018

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a teacher, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2); 8 U.S.C. § 1153(b)(2). After the petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

The Director of the Texas Service Center denied the Form I-140, Immigrant Petition for Alien Worker, finding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. The Petitioner appealed the matter to us, and we dismissed the appeal.<sup>1</sup>

The matter is now before us on a motion to reconsider. On motion, the Petitioner submits a brief and contends that his proposed endeavor is of national importance. Upon review, we will deny the motion.

**I. LAW**

A motion to reconsider is based on an incorrect application of law or policy. The requirements of a motion to a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3).

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification

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<sup>1</sup> *See Matter of K-L-H-*, ID# 478723 (AAO Sept. 22, 2017).

requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” *Dhanasar* stated that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver if the petitioner demonstrates by a preponderance of the evidence: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.<sup>2</sup>

## II. ANALYSIS

For purposes of a motion to reconsider, the question is whether our decision was correct based on the record that existed at the time of adjudication. As discussed in our appellate decision, the Petitioner proposes to continue his work as a high school English and language arts teacher at the [REDACTED] in [REDACTED] Arizona. In dismissing the appeal, we upheld the Director's finding that the Petitioner had not established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. Specifically, we determined that the Petitioner had not met the first prong set forth in the *Dhanasar* analytical framework.<sup>3</sup> We

<sup>2</sup> See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

<sup>3</sup> As the Petitioner provided evidence that he is well positioned to advance his proposed endeavor of increasing his students' English language proficiency, we found that he satisfied the second prong of the *Dhanasar* framework.

concluded that his proposed work teaching English in a charter high school classroom had substantial merit as it provided valuable educational benefits to his students, but that the prospective impact of his endeavor did not support a finding of national importance.

On motion, the Petitioner maintains that his proposed endeavor is of national importance. He explains that his contribution to his students' English language proficiency helps them to "become productive citizens of the United States." In addition, the Petitioner contends that ensuring his students overcome the "language barrier in an English speaking country like the United States" creates "harmony among the people" and "leads to one strong and solid community." These arguments show the substantial merit of the Petitioner's proposed endeavor, but they are not sufficient to demonstrate that his specific teaching activities have national importance.

In determining whether a proposed endeavor has national importance, we consider its potential prospective impact. The Petitioner asserts that his experience as a "highly qualified English teacher" in two different jurisdictions serves the "national priority goal of closing achievement gap" between advantaged and disadvantaged students.<sup>4</sup> The record, however, does not include evidence demonstrating that the Petitioner's work toward closing the achievement gap stands to have positive effects that reach beyond [REDACTED] to affect his region or our nation more broadly. Contributing to a national educational goal does not render the work of an individual teacher nationally important under the *Dhanasar* framework. The value of qualified teachers to U.S. national educational initiatives is collective rather than specific to the Petitioner's proposed endeavor. In *Dhanasar*, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893.

The Petitioner's arguments do not establish that our appellate findings were based on an incorrect application of the law, regulation, or Department of Homeland Security policy, nor does the motion demonstrate that our latest decision was erroneous based on the evidence before us at the time of the decision. While we acknowledge the merits of the Petitioner's work to improve the English language proficiency of his students at [REDACTED] the evidence does not demonstrate that his instructional activities offer benefits that extend beyond his school or district to impact the fields of English language learning or alternative education more broadly. As the Petitioner has not shown that we erred in determining that his specific endeavor's prospective impact supports a finding of national importance, he has not met the requirements of a motion to reconsider.

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However, because the Petitioner had not established the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* framework, we determined that he was not eligible for a national interest waiver and that further discussion of the balancing factors under the third prong would serve no meaningful purpose.

<sup>4</sup> With respect to his teaching experience and qualifications, our appellate decision properly considered the Petitioner's skills, knowledge, and record of success as an educator under the second prong of the *Dhanasar* analysis – which focuses on the foreign national. We determined that he met that second prong of the framework.

### III. CONCLUSION

The Petitioner's motion does not demonstrate that our previous decision was incorrect, and it does not show that he has met the requisite three prongs set forth in the *Dhanasar* analytical framework. Accordingly, we find that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

**ORDER:** The motion to reconsider is denied.

Cite as *Matter of K-L-H-*, ID# 1102545 (AAO Mar. 13, 2018)